

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

RESH, INC,  
Plaintiff,

v.

SKIMLITE MANUFACTURING INC, et  
al.,  
Defendants.

Case No. [22-cv-01427-EJD](#) (VKD)

**ORDER RE DISCOVERY DISPUTE RE  
ESI ORDER**

Re: Dkt. Nos. 46, 47

The Court has reviewed the parties' competing proposals for an order governing the preservation, search, collection, and production of ESI (Dkt. Nos. 46, 47) and resolves the remaining disputes as follows:

1. The parties dispute whether text messages should be preserved and searched as accessible ESI or whether they should be deemed not reasonably accessible and therefore not subject to preservation or searching. In many cases, discovery of text message may be unduly burdensome and not proportional to the needs of the case. Here, plaintiff Resh has shown good cause to obtain discovery of text messages to and from defendant Barrett Conrad. *See* Dkt. No. 47 at 2 and Ex. A. For this reason, the Court will require Barrett Conrad to preserve text messages for the relevant time period (which the parties do not address), and these messages are subject to the terms of the ESI order. As no such showing has been made with respect to any other custodian, no affirmative steps need be taken to preserve text messages of any other custodian, and such messages shall be considered not reasonably accessible unless the Court orders otherwise.

2. The parties also dispute how many search terms must be applied to custodial email. The number of search terms is generally less important than the efficacy of the particular terms

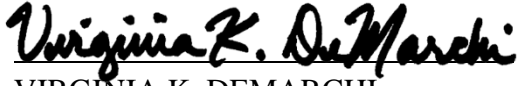
1 selected in identifying potentially responsive documents. As a default, the parties should attempt  
2 to limit the number of terms to no more than 10 search terms per custodian; however, for some  
3 custodians, 10 search terms may be too few, and for others, it may be too many. The Court  
4 expects the parties to confer and reach agreement on the search terms to be applied to each  
5 custodian's ESI. If they cannot reach agreement, they may submit their dispute for resolution  
6 using the discovery dispute resolution procedures in Judge DeMarchi's Standing Order for Civil  
7 Cases.

8           3. Defendants argue that the ESI order should clarify that no party is required to re-  
9 collect and re-produce its prior productions to include metadata. Plaintiff does not address this  
10 issue. It is not clear from the parties' submissions whether there is a disagreement on this point or  
11 not. It also is not clear whether the relevant document requests demanded that responsive  
12 electronically stored information must be produced with metadata, or whether any such demand  
13 was objected to. *See* Fed. R. Civ. P. 34(b)(1)(C), (b)(2)(D). As a general matter, if documents  
14 were produced by a party in .pdf format without metadata in response to document requests that  
15 did not specify a production format including metadata, the Court will not require any party to re-  
16 collect or re-produce such documents.

17           The parties shall submit a proposed ESI order for the Court's approval that conforms to the  
18 foregoing resolution of disputed issues by **January 6, 2023**.

19           **IT IS SO ORDERED.**

20           Dated: January 3, 2023

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23           VIRGINIA K. DEMARCHI  
24           United States Magistrate Judge  
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